S. HRG. 101-1027

NOMINATION—ICC

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

GAIL CLEMENTS McDONALD, TO BE A COMMISSIONER, INTERSTATE COMMERCE COMMISSION

SEPTEMBER 20, 1990

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NOMINATION—ICC

THURSDAY, SEPTEMBER 20, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m. in room SR-253, Russell Senate Office Building, Hon. J. James Exon, presiding.

Staff members assigned to this hearing: Robert Holleyman, staff counsel, and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The Committee will come to order.

The Committee on Commerce, Science, and Transportation convenes today to hear testimony from two individuals who have been nominated by the President to serve in high level transportation related positions.

We will first consider the nomination of Gail Clements McDonald, to be one of the five Commissioners at the Interstate Commerce Commission. She has been nominated to fill the position now held by Commissioner Paul H. Lamboley.

Ms. McDonald has served for eight years as Associate Director of Regulatory Affairs for the Gas Research Institute located here in Washington. In this position, she has served as Director of the Energy Compensation Programs and as a Federal liaison for the natural gas industry. Ms. McDonald has also worked for the Oklahoma Corporation Commission and for Senator and former Governor David Boren.

I welcome Ms. McDonald and will call upon her after I introduce the other individuals who will precede her in their testimony.

Also, Mary Sterling has been nominated to fill the position of Inspector General at the Department of Transportation. The duties of this position are to perform all audit functions; evaluate the effectiveness of programs to insure compliance with policy and procedures; promote economy and efficiency of programs; and perform all DOT investigative functions relating to waste, fraud and abuse in programs and operations, including coordination of such matters with the Justice Department and other law enforcement officials.

Ms. Sterling, since November of 1989, has served as an Assistant at the Department of Labor in the Office of Labor-Management Standards. Prior to that time, she was a Special Assistant to the Secretary of Labor.

Ms. Sterling was a senior associate with the law firm of McDowell, Rice and Smith. She was Executive Director of the

Bush-Quayle 1988 Campaign for the State of Missouri from September, 1988 through November, 1988. She served as a White House Fellow and as a Special Assistant to the U.S. Attorney General, U.S. Department of Justice.

Ms. Sterling is on her way here, I understand. When she comes, I will welcome her again when we call her to testify.

Both of the positions for which Gail McDonald and Mary Sterling have been nominated are very important. I look forward to hearing what their views are on the critical issues of government and especially the transportation industry and what they think that industry will face in the 1990's and what their needs are and their recommendations for improvements.

With that, I would recognize Senator Danforth.

Do you have any opening statement or comment at this time, Senator?

Senator DANFORTH. No, thank you. I do not.

Senator EXON. With that, we are very pleased to have the two Senators from Oklahoma here to, I assume, testify in behalf and in support of Ms. McDonald.

If not, we would take the unusual practice of declaring them out of order.

With that, let me first turn to my friend and colleague, with whom I had the pleasure of serving as governor before we came to the United States Senate at the same time, the senior Senator from Oklahoma, Senator Boren.

STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman and Senator Danforth. I hope that it will not be held against the nominee that I am here appearing in her behalf. As the old saying goes, I will come out for or against her, whichever will help her the most given the makeup of this Committee, as I look at those present this morning.

Seriously, it is a real pleasure for me to be here to join with Senator Nickles in presenting and introducing Gail C. McDonald, who has been nominated by the President for a position as a member of the Interstate Commerce Commission, to this Committee.

I was reflecting back that I have now known Gail for over 25 years. She is a native of Mississippi. She then went to Texas Christian University for both her Bachelor's degree and her Master's degree and, having left Mississippi and Texas, then had the very good judgment of coming to the State of Oklahoma to live. During that time, she served on the faculty of Tulsa Junior College and later was an instructor in humanities at Oklahoma State University.

Following that experience, she joined the staff of my office when I served as governor, as my assistant for educational and cultural affairs. She worked in the governor's office for almost four years and really did an outstanding job in that capacity.

I found that she was a person not only of keen intellect but also of good judgment, who worked well with other people. She was

really one of the most outstanding members of my staff and one of the most outstanding aides that I've ever had.

She then worked for me briefly here in Washington as a legislative aide, and she then went back to the State of Oklahoma, where she worked for the Oklahoma Corporation Commission, which is our State regulatory agency, which regulates transportation as well as energy production and other vital areas of the Oklahoma economy.

She served as an administrative assistant to one of the members of the Commission, Norma Eagleton; then later as the Director of Energy Conservation; and then later as the State Federal Liaison Officer for the Oklahoma Corporation Commission, before joining the Gas Research Institute here in Washington as the Associate Director of Regulatory Affairs.

So I think you can see from the kind of background that Gail has that she is exceedingly well qualified for this particular appointment.

She has had experience in the regulatory field. She has a very impressive academic background. She has had experience in both State government and in Federal Government.

So she comes to you exceedingly well equipped to perform the tasks for which the President has nominated her.

Again, I would simply stress that I am proud to be here with Senator Nickles to present her because of my confidence in her personal integrity and in her ability. I can only say that I think we are extremely fortunate that someone of Gail McDonald's capabilities would be willing to come back in to public service and render public service in this very meaningful way.

So I commend her to the Members of the Committee and I do so with the utmost confidence, having personally been in a position to evaluate the quality of her work and performance when she served as a member of my staff both when I was governor and Senator.

So I enthusiastically endorse this nomination, Mr. Chairman.

Senator EXON. Senator Boren, thank you very much. We appreciate your being here to introduce your fellow Oklahoman. I hope you can stay as long as possible. We do understand that there are a lot of pressures in the Senate, and if you have to leave at any time, we will certainly understand why.

Before you leave, though, and before I recognize Senator Nickles, I would just like to advise both of you that I was very much impressed with her background, and the statement that you just made, Senator Boren, about her character and honesty is very helpful.

I had a chance to visit with her when she came in for a courtesy visit before this hearing. I told her that I saw no impediment in her background other than possible allegiance to football teams. She assured me that she was a big backer of the Big Red of Nebraska.

Now, I didn't have her under oath. But if her integrity is as good as I understood her to say, we will have no problems in this area.

Senator Nickles, we are very pleased to have you here this morning. I am pleased to recognize you.

STATEMENT OF HON. DONALD L. NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Thank you, Mr. Chairman.

I want to clarify that Gail McDonald did not graduate from the University of Oklahoma. So I thought she would have no problem before you today.

Senator EXON. She's still suspect.

Senator NICKLES. Mr. Chairman, I would just like to join with my colleague, Senator Boren, in my strong endorsement and support for Gail McDonald for the Interstate Commerce Commission.

I have had the pleasure of knowing Gail for the last many years, both in her capacity in working for the Gas Research Institute, where she has done an outstanding job and in her various capacities with the Oklahoma Corporation Commission.

I think the President made an outstanding selection with Gail McDonald for this position, a very important position in the Interstate Commerce Commission. She has a regulatory background and the necessary experience in both the State and Federal Governments. I believe that she will do a very good job at the ICC and will be a very valuable player in this very important commission.

So I commend the President. I also recommend Gail to you and to this Committee and would urge that you accept her nomination.

Senator EXON. Senator Nickles, thank you very much. We appreciate very much your being here this morning also. If either or both of you can stay for the rest of the testimony, you are most welcome. Otherwise we will understand.

Senator LOTT. Mr. Chairman.

Senator EXON. Yes?

Senator LOTT. Before Senator Nickles and Senator Boren leave, I do want the record to reflect that she is really a Mississippian and that we are very proud to have her here.

I am very proud to have her here and I am going to expand on that in a minute, before they take too much Oklahoma credit. I want to make sure they are aware of that.

Senator DANFORTH. Why was she in such a hurry to leave?

Senator EXON. I am sorry to say, Ms. McDonald, that a controversy seems to have entered the picture here very early in your confirmation process.

Ms. McDonald, we are very happy to recognize you.

Senator BOREN. Mr. Chairman, she has risen above the origins of her birth.

Senator LOTT. You're right. She was born in Texas, you know. But she grew up in Mississippi.

Senator EXON. I have opening statements from Senators Hollings and Kasten that I will insert in the record along with the Committee questions that the nominee was requested to answer.

[The statements, biographical sketch, and questions and answers follow:]

OPENING STATEMENT BY THE CHAIRMAN

Today's hearing is on two important nominations: Gail McDonald to be a Commissioner on the Interstate Commerce Commission (ICC) and Mary Sterling to be Inspector General of the Department of Transportation (DOT).

The ICC is the Nation's oldest independent regulatory commission and has responsibility for regulating interstate surface transportation. The term for which Ms. McDonald has been nominated would expire on December 31, 1994. During the last few years, the ICC has been the focus of much controversy and debate. In the future, the ICC will continue to be faced with significant transportation regulatory issues. It is important that we give careful scrutiny to this nomination.

Ms. Sterling has been nominated to fill a critical position at DOT. The duties of Inspector General include performing all DOT investigative functions relating to waste, fraud, and abuse in programs and operations, including coordinating such matters with the Justice Department and other law enforcement agencies. It is essential that the Inspector General be objective and effective at all levels of responsibility, especially in the areas of evaluating programs and promoting economy and efficiency in the administration of these programs.

Both nominations are important and warrant our serious, careful consideration. We are pleased to have Ms. McDonald and Ms. Sterling here today.

Opening Statement by Senator Kasten

Thank you, Mr. Chairman, for holding this hearing on Gail McDonald's nomination to become a Commissioner at the Interstate Commerce Commission. I am please that we now have before us a nominee to fill a slot for which the term expired at the end of last year.

Gail McDonald is a nominee who has had a varied background that would serve her well if she is confirmed. Among other things, she has a strong academic background that includes stints as a instructor at a junior college and two universities. She has worked in state government for a regulatory commission and for a period was on Senator Boren's staff. For the past eight years, she has worked for the Gas Research Institute as Associate Director of Regulatory Affairs. In sum, she is a person with experience in government at both the state and federal levels who is used to working with agencies that administer complex regulatory schemes.

I hope that the Commerce Committee will move quickly to confirm Gail McDonald so that she can go to work to help the ICC tackle some of the tough issues that confront it. Again, thank you, Mr. Chairman.

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
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J. JAMES EXON, NEBRASKA
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WALTER B. MCCORMICK, JR., MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: McDONALD (Last) GAIL (First) CLEMENTS (Other)

Address: 12312 Loch Caron Circle (Current residence)
Fort Washington, MD 20744

Gas Research Institute (Business)
1331 Pennsylvania Ave., #730N
Washington, D.C. 20004

2. Position to which nominated: Commissioner, Interstate Commerce Commission

Date of nomination: August 3, 1990

3. Date of birth: March 9, 1944 (month) (day) (year)

Place of birth: Fort Worth, Texas

4. Marital status: Married

Full name of Spouse: Danny Lee McDonald

5. Names and ages of children: Jill Mariah Scott — Age 20

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Mississippi State College For Women	9/62-6/64		
Institute For European Studies	9/64-8/65		
Texas Christian University	9/65-8/66	BA	1966
Texas Christian University	9/66-8/67	MA	1967

Additional Graduate courses at University of Texas in Denton, Oklahoma State University and University of Tulsa 1969-1975.

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
1967	1969	Cooke County Jr. College	Gainesville, Texas	Instructor of History
1969	1970	Langston University	Langston, Oklahoma	Instructor of Social Science
1970	1974	Oklahoma State Univ.	Stillwater, Oklahoma	Instructor of Humanities
1975	1978	Office of the Governor State of Oklahoma	Oklahoma City, Oklahoma	Admin. Assistant Ed & Cultural Aff
1/79	6/79	U.S. Senator David L. Boren	Tulsa, Oklahoma	Field Representative
1979	1981	Oklahoma Corporation Commission	Oklahoma City, Oklahoma	Exec. Asst. to Comm. Eagleton
1982	Present	Gas Research Institute Assoc. Director of Regulatory Affairs	Washington, DC	Director of Energ Conser. Program & Federal Liaison

8. Government expenence: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

10/74 - 12/74 Transition Team - Governor-Elect David L. Boren

1979 - 1982 Oklahoma Associate, Institute for Educational Leadership

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Jefferson Club (Virginia Democratic Party)	1986-87	$125.00
Boren for U.S. Senate		$200.00
Dennis Eisnach for So. Dakota PUC	1988	$ 50.00
Bruce Hagan for No. Dakota PSC	1988	$100.00
Leo Reinbold for No. Dakota PSC	1986	$ 50.00
Henry Bellmon for Governor (OK)	1986	$100.00
Paris Glendenning for County Executive (MD)	1989	$100.00
Norma Eagleton for OK Corporation Commission	1982	$175.00

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

Conservation Round Table of Washington; President - WGR Toastmasters Club, 1988; Women in Government Relations, 1984 to present; Independent Agency Women, 1983 to present; Member, Board of Oklahoma Science and Arts Foundation, 1975 to 1983; Member, Executive Committee of Frontiers of Science Foundation, 1976 to 1980; Friends of the Torpedo Factory, 1986 to 1988; American Horticulture Society, 1985 to present; National Audubon Society, 1988 to present.

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Graduate Fellowship - Department of History Texas Christian University - 1967

National Honor Society - 1960 - 1962

Phi Alpha Theta 1966

GRI Employee Recognition Award - 1989

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

None

13. Speeches: Identify each speech which you have given during the past 3 years, the organization to which the speech was given, and supply two copies of each speech.

I have attached a copy of a speech which describes my position at GRI. Other remarks that I have made at state regulatory commissions have described the work that GRI is doing; such remarks are taken from the attached brochure, "An Update."

14. Qualifications: State what, in your opinion, qualifies you to serve in the particular position to which you have been nominated.

Because of my professional experience in both the public (including service in state government and Congressional staff service)and private sectors, I have first-hand knowledge of the dynamics of regulation, the regulated industry and how regulation impacts the daily lives of our citizens. Transportation in this country is critical to the well-being of every individual, every economic sector and every geographic area. The Congress sets transportation policy and the ICC plays a key role in carrying out its statutory dictates, considering complex and often controversial issues. The Congressional mandate requires that the ICC always seek a balance in regulation: to insure the economic viability of the transportation industries and to protect the public interest as well.

I will work hard to assimilate the information required to analyze the many significant policy issues at the ICC. Basically, I work well with people because I respect them; more importantly, I believe that public service is both an obligation and an privilege in a free society. I will do my best to serve the ICC and the public responsibly and honorably. I believe that my sensitivity to the role of government, and to the impact of public policy on all aspects of our economic system, will be valuable should the Senate confirm me for this important position.

Responses to Pre-Hearing Questions of the Majority for Gail C. MacDonald

September 20, 1990

1. Why do you feel you are qualified to serve as an ICC Commissioner?

Answer: I believe that my professional experience in both the public and private sectors has prepared me for the position of ICC Commissioner. I served in several positions on the staff of the Oklahoma Corporation Commission, working on energy regulatory issues, and I have continued to undertake regulatory policy analysis as a regulatory affairs manager with the Gas Research Institute. These positions have given me a first-hand knowledge of the dynamics of regulation and regulated industries, and an appreciation of the way in which regulation impacts the daily lives of individuals.

I believe that my temperament and background would enable me to carry out the Congressional mandate to seek a balance in regulation: to ensure the economic viability of the transportation industries and to protect the public interest as well.

Being nominated by President Bush to serve as a commissioner at the ICC is a great privilege. I will do my best to serve the agency and the public responsibly and honorably. I believe that my sensitivity to the role of government, and to the impact of public policy on all aspects of our economic system, will be valuable should the Senate confirm me for this important position.

2. What are your views concerning the future of the ICC?

Answer: I do not have a position on the question of whether ICC sunset should take place. I understand that the Administration has advocated the sunset of the agency and termination, or transfer to another agency, of ICC functions. If Congress should adopt the Administration's point of view, I would, as a Commissioner, do my best to carry out the will of Congress. But I do not view the subject with any preconceived ideas about ICC sunset. If confirmed I will approach the job as one which deserves the best of my abilities, and I will view the agency's mission as a continuing one unless and until Congress expresses a contrary view.

3. Are there any areas in which you have observed a need for change in either the direction or operation of the ICC?

Answer: I believe the Commission has moved in a positive direction with the recent adoption of a policy of regularly scheduled open meetings at which Commission decisions are made in a public forum.

In terms of other initiatives, I would make it my goal to facilitate more expeditious processing of Commission cases. I would make every effort to eliminate procedural delays, which are not only very costly to the parties involved but can sometimes actually negate the benefits of particular transactions.

I have noted a more positive atmosphere at the Commission, a point upon which members of the Committee have commented. I would strive to work to maintain this atmosphere, and I would attempt to achieve a harmonious working relationship with my fellow Commissicners and with the Congress.

4. Do you have a general regulatory philosophy that you would bring to the ICC?

The ICC, together with the Department of Transportation and the other transportation agencies, has a very important role in preserving and enhancing the strengths of our national transportation system. I believe the principal mission that Congress has given the ICC is to balance and to accommodate the interests and needs of the people and businesses participating in the surface transportation system when those needs and interests compete and conflict with each other; and to do this without undermining the efficiency, competitiveness and innovativeness of the system.

5. How would you assess the overall impact of the Motor Carrier Act of 1980 on the trucking industry and the shipping public?

Answer: Most studies show that the overall impact of the Motor Carrier Act of 1980 on the trucking industry and the shipping public has been positive. Although estimates of the benefits vary, a recent study done by the Brookings Institution placed a value of 20 billion 1988 dollars on the annual benefits to shippers and their customers. Regardless of how the benefits are measured, it is generally acknowledged that the MCA lowered shippers' costs, improved service, and increased efficiency. According to studies by the ICC and DOT, these benefits were achieved without a loss of service to small communities or a decrease in truck safety.

Based on my own observations and my study of the subject I conclude, on balance, that the MCA has been largely successful. However, I am also aware of concerns raised by the industry at the recent Commission hearing on motor carrier collective ratemaking. It is also my understanding that the Commission may hold an additional hearing this year to address various motor carrier issues.

6. How would you assess the overall impact of the Staggers Rail Act of 1980 on the rail industry and the shipping public?

Answer: The regulatory reforms introduced by the Staggers Rail Act have reduced economic regulation of the railroad industry and fostered competition where feasible. That legislation revived an industry that less than a decade before its enactment had been truly on the ropes, as evidenced by the bankruptcy of the Northeastern railroads in the early 1970's and the dismal financial performance of the other carriers during the remainder of the decade. Railroad profitability was extremely low, plant and equipment was not adequately maintained and service was poor. Railroads found it difficult to abandon unprofitable lines and set rates at compensatory levels.

The overall results from the implementation of the Staggers Rail Act of 1980 have been better than projected at the time of the Act. Today railroads are again moving towards profitability; some close to that goal are actually earning a market rate of return. Shippers have benefitted from a substantial decline in rail rates (as measured in constant dollars.)

While Staggers has eliminated many unnecessary government regulations, there are, in my opinion, still some situations where the public interest is served by regulatory oversight of specific railroad activities such as pricing of captive traffic.

7. Based on your observations of the ICC and transportation issues, how would you characterize the concerns that were raised in recent years regarding the Commission's implementation of the Staggers Rail Act of 1980? Do you have any general views regarding the genesis of this controversy, its resolution to date, and future prospects?

Answer: My general understanding is that much of the controversy over Staggers Act implementation focussed on concerns over rates and service available to captive shippers. While I am not very familiar with the chronology of Commission actions, I understand that the controversy over captive traffic has not yet been fully resolved, and that cases involving these matters are still pending before the Commission. If confirmed, I will work hard to come to grips with these issues.

8. What are your general views on the role of labor protection in connection with rail line sales, abandonment applications and requests for merger authority?

Answer: The Interstate Commerce Act directs the Commission to impose labor protection on certain transactions subject to Commission approval. This requirement expresses Congress' intent that, as to these transactions, employees should not suffer as a result of certain operational decisions made by their employers. If confirmed, I intend to carry out Congress' policy as expressed in the relevant provisions of the Interstate Commerce Act.

I understand that the Commission is continuing, through decisions in individual cases, to resolve the dynamic between the Railway Labor Act and the Interstate Commerce Act. Several significant cases are still pending before the Commission, and therefore I should not comment in any detail about these issues.

STATEMENT OF GAIL C. McDONALD

Senator EXON. Ms. McDonald, we recognize you at this time.

Ms. MCDONALD. Thank you, Mr. Chairman and Members of the Committee.

I am honored to appear before you today as President Bush's nominee to the Interstate Commerce Commission.

This is a very exciting day for our family, and I want you to know that my husband, Danny, is here. Our daughter, Jill, wanted to be here, but she had a more persistent summons from a chemistry exam at the College of William and Mary.

I would also like to express my deep appreciation to Senator David Boren, whose consuming interest in and love for public service was contagious, and motivated all of us who were lucky enough to go with him to the State House in 1975.

I am also indebted to Senator Don Nickles for his wise counsel and generous support through the rather long process of my nomination.

My purpose this morning is to tell the Committee what I see as the role of the ICC in the 1990's and to tell you about how I view my job as a Commissioner.

Despite its problems, the United States is blessed with the greatest transportation system in the world. It is the most efficient, economical, and innovative system anywhere. It is the mainspring of our economic machine, and maintaining and improving its efficiency and innovativeness is absolutely essential to our economic well-being and, most importantly, to our competitiveness in the world marketplace.

Congress has given the ICC a very important role in preserving and enhancing the strengths of our national transportation system. I believe that its principal mission is to balance fairly and to accommodate expeditiously the interests and needs of the people and firms participating in the surface transportation system when those needs and interests compete and conflict with one another, and to do this without undermining the efficiency, competitiveness, and innovativeness of the system.

Mr. Chairman, the additional points in my statement are before you, of course, and I would like to submit them for the record.

Senator EXON. Without objection, they are accepted for the record.

Ms. MCDONALD. In closing, then, I would like to say that I look forward to working at the ICC and I will work hard to merit the support that I have heard voiced this morning and that is represented by the fact that family and friends are here with me.

I am also very grateful for those of you who had time to meet with me during the confirmation process. I learned a great deal from our meetings and from my meetings with the staff of this Committee.

I look forward to continuing that process. I am committed to working with the Congress should the Senate confirm me.

I will be pleased to answer the Committee's questions.

[The statement follows:]

STATEMENT OF GAIL C. MCDONALD

BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

SEPTEMBER 20, 1990

Mr. Chairman and Members of the Committee:

I am very honored to appear before you today as President Bush's nominee to be a member of the Interstate Commerce Commission. This is an exciting day for our family. I want to introduce my husband Danny and report that our daughter Jill would like to be with us, but she has been sidetracked by a chemistry exam at William and Mary.

I would also like to express my deep personal appreciation to Senator David Boren whose love for public service is contagious and who has motivated all of us who went to the state capitol with him in 1975. I am also indebted to Senator Don Nickles for his wise counsel and generous support for my nomination.

My purpose this morning is to tell the Committee what I see as the role of the ICC in the 1990's and what my role would be as a commissioner. My professional experiences serving on the staff of the Oklahoma Corporation Commission, on Senator Boren's staff, and as a manager with a trade association, have given me a first-hand knowledge of the dynamics of regulation and regulated industries, and an appreciation of the way in which regulation impacts the daily lives of individuals. I believe that an ICC Commissioner should be sensitive to all these considerations.

The United States today is blessed with the greatest transportation system in the world. It is the most efficient, economical and innovative system anywhere. It is the mainspring of our economic machine, and maintaining and improving its efficiency and innovativeness is absolutely essential to our economic well-being and, most importantly, to our competitiveness in the world marketplace.

The ICC, together with the Department of Transportation and the other transportation agencies, has a very important role in preserving and enhancing the strengths of our national transportation system. I believe the principal mission that Congress has given the ICC is to balance and to accommodate the interests and needs of the people and businesses participating in the surface transportation system when those needs and interests compete and conflict with each other; and to do this without undermining the efficiency, competitiveness and innovativeness of the system.

In the past decade, Congress has enacted three major statutes affecting the ICC -- the Motor Carrier Act, the Staggers Rail Act and the Bus Regulatory Reform Act. The ICC's main job today is to carry out the provisions and policies of those acts. This is often a challenging role to fulfill, but I think Congress has given the ICC sufficient guidance on the principal transportation policies that should direct our decisionmaking. With respect to those policies, I believe that both the Congress and the Commission have roles to play, and if confirmed I would

work with this Committee and with Congress as a whole to improve and maintain our exemplary transportation system.

Given my view of its main mission, I believe that the ICC's primary responsibility is to provide the best service possible to the constituency it was established to serve -- that is, those parties whose competing needs and interests it must balance and accommodate. To me, that means several things.

First, I agree wholeheartedly with the current approach of Chairman Philbin and his fellow commissioners that ICC decisionmaking should take place in open and regularly scheduled meetings for all to observe.

Second, I think it is very important that all interested parties come away from ICC proceedings with the feeling that their views have been given full and fair consideration.

Third, I believe it is essential that the ICC makes its decisions as promptly as possible and that every effort be made to eliminate procedural delays, which are not only very costly to the parties involved but can sometimes actually negate the benefits of particular transactions.

Finally, I think that for the ICC to perform its decisionmaking functions effectively, it is essential that the commissioners act as a collegial body respecting each others views, without personal acrimony. I look forward to serving on the ICC and will work diligently to merit the support that family, friends and colleagues have shown by their presence today. I want, finally, to express my thanks to those members who were able to meet with me during the confirmation process. I learned a great deal from these meetings and from meetings with the professional staff, and I look forward to continuing that process. I am committed to working with the Congress should the Senate confirm me.

I will be pleased to answer the Committee's questions.

Senator EXON. Ms. McDonald, thank you very much. Let me lead off with my questions.

I hope that you are in a position to answer these questions or at least give us your view on them, if you have a view at this time.

The ICC has been called upon to consider the reasonableness of the motor carrier rates sought to be applied retroactively to shippers for transportation services rendered at negotiated but unfiled rates. This negotiated rates or undercharge issue has generated a great deal of controversy.

Do you have any views on this issue of the ICC's actions and proposed legislation in this area? Do you believe there is a need for greater enforcement by the ICC of the tariff requirements?

Ms. MCDONALD. Mr. Chairman, I am certainly aware of the Maislin decision and the impact on shippers affected by this problem. I have not studied the many cases that came to the ICC, although I am generally familiar with those decisions and with the way in which the cases came to the court and created this very difficult situation.

It would seem to me that a legislative remedy in this particular case is something that would go far to address this crisis. The ICC's authority is now limited almost exclusively to determinations of rate reasonableness and, since the passage of the Motor Carrier Act in 1980, individual rate reasonableness cases have not been brought.

So, for the Commission to exert the authority Congress has given it and start hearing those cases would require a very long lead-time as new standards must be promulgated and as the many, many cases that are out there are heard.

Senator EXON. Ms. McDonald, let me ask you this. What are your views regarding the proposals to further deregulate the trucking industry? Do you believe the ICC should play a role in advancing such proposals, either legislatively or administratively?

Ms. MCDONALD. Mr. Chairman, I have read some of the proposals that have come before the Committee to further deregulate the trucking industry. I have noted your votes on those proposals. I have no preconceived ideas about furthering such things. I view my role at the ICC as to enforce the Motor Carrier Act of 1980 that you have given us, to stay within the bounds of that statute.

I will follow with great interest your continued deliberations on further deregulation of trucking, and I will try to work with you and your professional staff to gather whatever pertinent information the ICC might be able to amass for you to look at the facts and conditions of the industry.

Senator EXON. I appreciate your answer. I think that is the right attitude that you should have on this particular matter. There are all kinds of conclusions that have been reached by different parties on this particular matter. I think, basically, the majority of the Committee has felt that this is not the time to be proceeding into this area. But I do hope, as we look at this matter in the future, that we can have a free flow of information back and forth between the ICC and this Committee and the staffs thereof. We the members of this committee and their staffs need background facts and figures that might affect the eventual outcome of this matter—

which has been kicked around for a long time—at some time in the future. So I appreciate your answer.

What correlation, if any, do you see between safety and the ICC's regulatory activities insofar as motor carriers are concerned?

Ms. McDONALD. Mr. Chairman, this is an issue that has interested me a great deal. In my reading, I found DOT studies and ICC studies that indicated that there had been no decrease in safety since the Motor Carrier Act had been passed in 1980. Certainly, my other reading would indicate to me that there is great concern among members of the American public and of Congress about safety. I want to study the issue further.

I have visited with the director of the ICC's Motor Carrier office to get a sense of the things that the ICC is able to do in its licensing process, and I am assured that they are very cautious in looking at the DOT certifications for licensing and that they take those things very seriously.

I would be pleased to study that further, certainly, and I will further research that issue myself.

Coming from a small State, or small States, whichever is appropriate after what we have heard this morning——

Senator EXON. I would hope that you would have had some firsthand experience with this in your previous, very interesting, record, which shows high qualifications for the position that you have been nominated for by the President. This has to do with something that small States, in particular, are very much concerned about.

Do you believe that anything more needs to be done to improve the ICC procedures insofar as they relate to the ability of small shippers to initiate and pursue rail rate cases?

Ms. McDONALD. Mr. Chairman, certainly when I was at the Oklahoma Corporation Commission, I was concerned with small shippers and with small businesses that had concerns about rates. My father was a small businessman in Greenville, MS, and I certainly saw the impact of regulation on him and my mother as they ran their business.

From my background, I really believe that not enough has been done. Small business people, small shippers do not find a large agency, like the ICC, an easy forum. I think it is always a Commissioner's duty to look askance at their procedures and ask how could a small business person penetrate this system, how could a complaint be effectively answered. Who answers questions that these people have when they are trying to decide if they have a case, if there has been an injustice, if they need to go further and hire a lawyer? I will look very carefully at that.

I have asked at the Commission about various outreach offices, and I just really have not had enough time to evaluate that objectively. I will do more and I would like to work with you on that. That is a special interest of mine.

Senator EXON. Would the statement that you just made about small shippers also encompass captive shippers?

Ms. McDONALD. There are, of course, captive shipper cases before the Commission, and I do not want to say too much about that. The whole issue of protecting captive traffic, though, is addressed carefully by the Staggers Act, and I think that we have very significant

duties there. I have been studying that. I have talked with the professional staff about the chronology of things that happened and the feelings that we need to be concerned with all the equities that come with those cases.

I will certainly further study issues which affect captive traffic and look at the competitive access issues that Members of the Committee have mentioned to me as well.

Senator EXON. My last question, Ms. McDonald, has to do with the bus transportation system, which is a major concern in the United States today.

As you know, in 1988, the ICC approved the merger of the Nation's two largest bus companies, Trailways and Greyhound. How do you view the state of interstate bus transportation in light of this merger, coupled with the ongoing drivers' strike and other factors, such as the Bus Regulatory Reform Act of 1982?

Ms. MCDONALD. I have studied the Bus Regulatory Reform Act and I have followed the recent Greyhound strike in the clips and read what I could about the merger. It seemed to me that because of Trailways' serious economic condition, the merger had to take place. I am very concerned about the state of Greyhound and the fact that now this whole issue is with the Bankruptcy Court.

I will study it further to see if there is something more that the ICC could do.

I have noted in Oklahoma some positive initiatives by small business people who have come in and provided the service that has fallen behind to rural communities. I hope that trend will continue.

Senator EXON. Thank you, Ms. McDonald.

Senator Danforth.

Senator DANFORTH. Congratulations, Ms. McDonald.

Ms. MCDONALD. Thank you, Senator.

Senator DANFORTH. I want to ask you a single, philosophical question. But I am going to ask it within the context of the Staggers Act and its implementation. What I am interested in is more your general approach to being a Commissioner on a regulatory agency.

You say that in dealing with small shippers and captive shippers, you want to make sure that the procedures are available—at least this is the way I understand your answer to Senator Exon's question—so that it is not impossible to use the ICC for the purpose for which it was intended. You have mentioned what you call "outreach," which I take to mean procedural availability of the Commission.

My question to you is whether you come to the Commission with some philosophical agenda that you are committed to pursuing regardless of whatever Congress thinks of an issue. We passed the Staggers Act. This Committee has been sharply divided, as a matter of fact, but the last time the CURE legislation was advanced in the Committee, those of us who believe in the Staggers Act succeeded in beating it back.

The hope of this Senator would be that any ICC Commissioner or anybody who is a member of any Commission would be committed to utilizing the procedures of the Commission, making those procedures available to whatever party seeks to come before the Commission, enforcing the law, interpreting the law as it is written, but

not trying to superimpose some philosophical agenda on the law or to manipulate the law into some reading which is peculiar to yourself.

So the question that I am asking, with specific reference to the Staggers Act, but, more broadly, is do you have any particular hang-ups with which you would come to this job? Do you have any philosophical or political agenda which you believe you have a calling to put into place, regardless of what we happen to think?

Ms. McDONALD. Senator, I really come to this job wanting to serve in it as the Congress has defined that role, and I think that you have given us three very fine acts in the past decade which define the role.

I am open minded. I have been at a State regulatory commission and I know that the cases that come before us are hot and have very complex issues with equities on all sides.

I think our role is to look at all the details and then look at the law very carefully and the legislative intent very carefully in applying that, and, hopefully, to take the "heat" that is in these issues and dispense with them in a fair and even-handed manner so that so much of the heat does not spill over on Congress and this Committee.

Senator DANFORTH. You do not view yourself as the great salvation of one interest or another?

Ms. McDONALD. No, and no interest views me as their salvation, Senator. That may be why I have had such difficulty in getting this nomination.

Senator DANFORTH. Thank you very much.

Ms. McDONALD. Thank you.

Senator EXON. Thank you, Senator Danforth.

Senator Lott.

Senator LOTT. Thank you, Mr. Chairman. I, too, would like to extend my congratulations to Ms. McDonald and to say, frankly, that I am very proud of her nomination to this very important position. I have every confidence that she will be an outstanding member of the Commission.

I wanted to be here to lend my support.

I allowed the two Oklahoma Senators to introduce you, although I felt like probably I should be doing that. I do think you have a good background for what you are fixing to do. I don't think you have preconceived notions that would be a liability to you in doing a fair, honest, and objective job. Your work in State government with then-Governor Boren and your work at the Gas Research Institute obviously has been a good training ground for you. But I think that the fact that your parents live in Greenville, MS, and that your father was a small businessman and that you graduated from Greenville High School and went to Mississippi State College for Women, and that, in fact, you neither pull for Texas, Oklahoma or Nebraska, but, instead, Mississippi State University would give you the greatest possible qualifications for this job.

Educationally, obviously you are well qualified, in spite of your temporary TCU experience.

Now don't get upset, Mr. Chairman.

Senator EXON. Oh, I'm just a reserved fellow.

Senator LOTT. I would make one comment beyond that, along the lines of the questions on the Staggers Act.

Obviously, we have all been involved in that over the past several years. We have had the CURE legislation that we dealt with or considered when I was in the House. I think basically good progress has been made. But I have just one bit of admonition. There are captive shippers, and I hope that the ICC will be sensitive to their unique problems. You have already touched on that, but I would be glad to have you respond in any way you feel you should at this point.

Ms. MCDONALD. Thank you for those comments.

I am certainly aware of the issues of the captive shippers. I was able to visit with Senator Rockefeller yesterday as well, and I will accept your admonition and look at those issues very carefully. I look forward to consulting with you again on them as they impact your State.

Senator LOTT. Thank you.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Lott.

Senator Burns.

Senator BURNS. Mr. Chairman, I have a short statement and would ask that it be entered into the record.

I, too, want to add my voice of congratulations to you for being chosen for this position. I think we had a little visit yesterday, the day before yesterday, or some time this week down at the ICC, at which I said there would be no surprises, and there sure are not.

I know you were in there when I testified about the hopper car situation that we have in the upper Midwest. I guess that is my concern, and I think it should be your concern, too.

Senator Lott and other Senators have already brought up the subject of captive shippers. There are captive shippers, where only one railroad serves the whole State, and we happen to be one of those.

Again, my congratulations. You certainly have my support.

Thank you, Mr. Chairman.

Ms. MCDONALD. Thank you, Senator.

Senator EXON. Thank you, Senator Burns.

I have no further questions.

Are there any further questions from any Members of the panel?

[No response.]

Senator EXON. If not, Ms. McDonald, we appreciate very much your being here and receiving your testimony. I intend to support this nomination. I think you are an excellent nominee from the President. We will try to move this along as quickly as we possibly can.

Ms. MCDONALD. Thank you, Senator. Thank you so much.

Senator EXON. Thank you very much.

[Whereupon, at 10:40 a.m., the hearing was concluded.]

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